

PUBLIC HEALTH COUNCIL

Meeting of the Public Health Council, Tuesday, January 26, 1999, 10:00 A.M., Massachusetts Department of Public Health, 250 Washington Street, Floor 2, Boston, Massachusetts. Present were: Dr. Howard K. Koh (Chairman), Dr. Clifford Askinazi, Dr. Peter Connolly, Mr. Manthala George Jr., Mr. James Phelps, Mr. Albert Sherman, Ms. Janet Slemenda, Mr. Joseph Sneider and Mr. Bertram Yaffe. Also in attendance was Ms. Donna Levin, General Counsel.

Chairman Koh announced that notices of the meeting had been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance, in accordance with the Massachusetts General Laws, Chapter 30A, Section 11A 1/2. In addition, Dr. Koh announced that the Project No. 4-3966 of Columbia Metro West Healthcare has been withdrawn at the applicant's request. Dr. Koh further stated that Senator Pacheco has submitted written comments in support of Project Application No. 5-3897 of Morton Hospital and Medical Center, Good Samaritan Medical Center, and St. Anne's Hospital.

The following members of the staff appeared before the Council to discuss and advise on matters pertaining to their particular interests: Mr. Howard Wensley, Director, Division of Community Sanitation; Dr. Paul Dreyer, Director, Division of Health Care Quality; Ms. Nancy Ridley, Assistant Commissioner, Bureau of Health Quality Management; Ms. Joyce James, Director, Mr. Jere Page, Senior Analyst, Ms. Joan Gorga, Program Analyst, Determination of Need Program; and Attorney Carl Rosenfield, Deputy General Counsel.

RECORDS OF THE PUBLIC HEALTH COUNCIL MEETINGS OF NOVEMBER 24, 1998 AND DECEMBER 15, 1998:

Records of the Public Health Council meetings of November 24, 1998 and December 15, 1998 were presented to the Council. After consideration, upon motion made and duly seconded, it was voted (unanimously): That, records of the Public Health Council Meetings of November 24, 1998 and December 15, 1998, copies of which had been sent to the Council Members for their prior consideration, be approved, in accordance with Massachusetts General Laws, Chapter 30A, Section 11A 1/2.

PERSONNEL ACTIONS:

In a letter dated January 12, 1999, Blake Molleur, Executive Director, Western Massachusetts Hospital, recommended approval of the appointment and reappointments of physicians to the affiliate

and active medical staffs of Western Massachusetts Hospital, Westfield. Supporting documentation of the appointees' qualifications accompanied the recommendation. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the Executive Director of Western Massachusetts Hospital, under the authority of the Massachusetts General Laws, Chapter 17, Section 6 the following appointment and reappointments to the affiliate and active medical staffs of Western Massachusetts Hospital be approved:

<u>APPOINTMENT</u>	<u>RESPONSIBILITY</u>	<u>MEDICAL LICENSE NO.</u>
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Jonathan Slater, M.D.	General Medicine/Nephrology	81014
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<u>REAPPOINTMENTS</u>	<u>RESPONSIBILITY</u>	<u>MEDICAL LICENSE NO.</u>
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Rodney Larsen, M.D.	General Medicine	38727
Kollegal Murthy, M.D.	General Medicine	56320

In a letter dated January 12, 1999, Katherine Domoto, M.D., Associate Executive Director for Medicine, Tewksbury Hospital, Tewksbury, recommended approval of the reappointments of physicians to the allied and consultant medical staffs of Tewksbury Hospital. Supporting documentation of the appointees' qualifications accompanied the recommendation. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the Associate Executive Director for Medicine of Tewksbury Hospital, under the authority of the Massachusetts General Laws, Chapter 17, Section 6, the following reappointments to the allied and consultant medical staffs of Tewksbury Hospital be approved for a period of two years beginning January 1, 1998 to January 1, 2000:

<u>REAPPOINTMENTS</u>	<u>STATUS/SPECIALTY</u>	<u>MEDICAL LICENSE NO.</u>
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Phillip Gendelman, M.D.	Consultant Staff Ophthalmology	46245
Steven Nisenbaum, Ph.D., J.D.	Allied Staff Psychology	3670
Ann Teele, Ph.D.	Allied Staff Psychology	1360

Note: Council Member George, made the following corrections to two Lemuel Shattuck Hospital credentialing forms for Drs. Oladipo and Grossman: Next to Jane Dunning's signature, the date should read October 12, 1998 instead of 1999.

In a letter dated January 11, 1999, Robert D. Wakefield, Jr., Executive Director, Lemuel Shattuck Hospital, recommended approval of the reappointments of physicians to the medical staff of Lemuel Shattuck Hospital, Jamaica Plain. Supporting documentation of the appointees' qualifications accompanied the recommendation. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the Executive Director of Lemuel Shattuck Hospital, under the authority of the Massachusetts General

Laws, Chapter 17, Section 6, the following reappointments to the medical staff of Lemuel Shattuck Hospital be approved:

<u>REAPPOINTMENTS</u>	<u>STATUS/SPECIALTY</u>	<u>MEDICAL LICENSE NO.</u>
Priscilla Alaguilan, M.D.	Active/Anesthesiology	60575
Mary Anderson, M.D.	Active/Radiology	54360
Shahla Asvadi, M.D.	Consultant/Dermatology	52195
Denis Derman, M.D.	Active/Hem/Oncology	71738
Hillel Grossman, M.D.	Active/Psychiatry	78655
John Jamesson, M.D.	Active/Otolaryngology	72421
David MacMillan, M.D.	Consultant/Psychiatry	76602
Leonid Korkin, M.D.	Consultant/Urology	151270
Barbara McGovern, M.D.	Active/Internal Medicine	74283
Olarewaja Oladipo, M.D.	Active/Orthopedics	151848
Steven Schwaitzberg,M.D.	Consultant/Surgery	55759

PROPOSED REGULATIONS:

INFORMATIONAL BRIEFING ON PROPOSED AMENDMENTS TO 105 CMR 430.000: MINIMUM SANITATION AND SAFETY STANDARDS FOR RECREATIONAL CAMPS FOR CHILDREN, STATE SANITARY CODE, CHAPTER IV:

Mr. Howard Wensley, Director, Division of Community Sanitation, addressed the Council, “The Department of Public Health is mandated to promulgate regulations pertaining to Recreational Camps for Children. These regulations were initially promulgated in the early 1960s and amended several times thereafter. The most recent amendments were promulgated in the Spring of 1998....Following the camping season, staff met with representatives of the American and Massachusetts Camping Associations in order to learn about any problems that they have with the regulations. Based on this meeting and correspondence from local boards of health, staff proposes the following amendments:

430.020: Definition

Adds the definition of a medical specialty camp. This is a camp which provides programs for campers with specific health/medical needs for example diabetes.

430.100: Camp Counselor Requirements

The current regulations require that the age of a counselor at residential, travel, trip and special needs camps be at least 18 years of age. It is proposed that this language be amended to allow a person who may be less than 18 years of age but has graduated from high school to be a counselor.

430.102: Supervision of Specialized Activities

Re-inserts required qualifications for camp staff who are supervising scuba diving, firearms, archery and horseback riding activities. These qualifications were inadvertently dropped last year from the current version of the regulations.

430.150 Health Records

The addition of this amendment will require that children attending sports camps have a physical examination prior to attending camp. This is already required for children attending residential, trip and travel camps.

430.155 Required Immunizations

Amends the requirements for MMR immunization in order to parallel the school health requirements.

430.159 Health Care Staff to be Provided

It is proposed that a licensed practical nurse be added to the personnel permitted to serve as the camp's health care supervisor. This person is the on-site individual responsible for emergency first aid. Others who may be health care supervisors include physicians, registered nurses, nurse practitioners, physician assistants or any other person trained in first aid and CPR.

It is further proposed that any medical specialty camp be required to have a licensed medical staff person on site at all times. This is currently required in camps having more than 150 campers and staff, and at all camps operated for children who are physically or mentally handicapped.

430.160 Storage and Administration of Medication

Proposed amendments to this section include requiring that the directions for use be on every prescription medication brought from home, expanding the standards for providing security for the storage of all medications and clarifying the administration of medications at camp.

430.190 General Program Requirements

Staff propose changing the disclosure language currently required on all promotional literature issued by the camps. The camping industry provided information to the department regarding the cost of using the language required by the current regulations. It is proposed that the

disclosure be shortened.” A public hearing will be held on February 3. Following that hearing, the proposed amendments will be brought back to the Council for final action.

NO VOTE/INFORMATION ONLY

DETERMINATION OF NEED:

CATEGORY 2 APPLICATIONS:

PROJECT APPLICATION NO. 5-3897 OF MORTON HOSPITAL AND MEDICAL CENTER, GOOD SAMARITAN MEDICAL CENTER AND ST. ANNE’S HOSPITAL -- to establish a radiation therapy service with acquisition of a 6-18 MeV linear accelerator to be located on the campus of Morton Hospital and Medical Center:

Council Member Manthala George, Jr. stated for the record that though he served on the Board of Trustees of Brockton Hospital for a number of years, he received no compensation and has no association with Brockton Hospital. He said in part, “I have discussed this matter with the General Counsel of the Department of Public Health and independently with legal counsel confirming that there is no conflict of interest and that I can participate in the matters before the Council that are brought by Morton and Brockton Hospital...I am disclosing this information pursuant to M.G.L. Ch. 268A.”

For the record, Senator Marc Pacheco, Vice-Chair of the Joint Committee on Health Care has submitted a letter of support for Project Application No. 5-3897, dated January 25, 1999. Senator Robert Creedon, Jr., Representative Geraldine Creedon and Representative Christine Canavan submitted a letter dated January 20, 1999 requesting the Council to “...force potentially competing providers to come together in the interest of joint planning...” referring to DoN Project Applications #5-3897 and No. 5-2782. In addition, a correction has been made to staff’s memorandum, dated January 19, 1999, page 2, third paragraph, third sentence which should read, “Brockton is more than 30 minutes travel time from Morton and therefore does not meet this requirement.”

Dr. Paul Dreyer, Director, Division of Health Care Quality made introductory remarks, stating that this application is being reviewed under the guidelines approved by the Council in 1993. Mr. Jere Page, Senior Analyst, Determination of Need Program presented Project Application #5-3897 to the Council. He said in part, “...Good Samaritan Medical Center, Morton Hospital and Medical Center, and St. Anne’s Hospital propose to establish a megavoltage radiation therapy service through purchase

of a dual energy (6-18 MeV) linear accelerator and construction of a new facility on the campus of Morton Hospital to house the unit. Under the terms of the Memorandum of Understanding (MOU), a free-standing radiation therapy clinic will be established under a joint legal entity comprised of the three hospitals. The joint entity will lease the site and equipment from Morton Hospital and Medical Center, which will provide 100% equity to cover the capital costs of the proposed project. St. Anne's Hospital will provide administration and management of the new service. St. Anne's currently operates radiation therapy services with three linear accelerator units: two in Fall River and one in Dartmouth, which is jointly owned with St. Luke's Hospital of New Bedford. The Joint Center for Radiation Therapy in Boston will be the tertiary affiliate. The recommended maximum capital expenditure is \$3,882,500 (April 1994 dollars) and recommended operating costs are \$1,224,048 (April 1994 dollars). Morton Hospital will contribute 100% in equity of the MCE from funded depreciation.

This application is reviewed under the May 25, 1993 Determination of Need Guidelines for Megavoltage Radiation Therapy Services. Staff found that the project meets the health planning process of the Guidelines, forming a health care cluster with Good Samaritan and St. Anne's Hospitals. The Greater Taunton Health and Human Services Coalition, which represents a number of consumer groups in the area has written a letter of support and a willingness to participate in the cluster. The Guidelines project need for 58 megavoltage radiation therapy units by the year 2000. Adjusting for existing capacity, there is currently a statewide unmet need for one (1) additional radiation therapy unit for new cancer patients. The proposed service area includes the cities and towns of Attleboro, Taunton-Berkley, Dighton, Middleboro, Lakeville, Mansfield, Norton, Raynham, and Rehoboth. Using Massachusetts Cancer Registry incidence data from 1982-1995 for Taunton-Berkley, Middleboro, Lakeville, Dighton, and Raynham, staff applied age-adjusted, average cancer incidence rates per 1,000 population to the year 2000 MISER population projections for each city and town. Based on this methodology, staff determined that there would be at least 212 new radiation therapy cases in the applicant's 'core' service area by the year 2000. Staff notes that the projected 212 new radiation therapy cases are below the 250 new cases required by the Guidelines to establish a new radiation therapy service. However, Goddard Medical Associates, now Bridgewater Goddard Park Medical Associates (BGPMA), is willing to refer radiation therapy patients to the proposed Morton unit from the following communities: Mansfield, Norton, Easton, Bridgewater, East Bridgewater, and West Bridgewater....The applicants assert that BGPMA physicians will refer 50% or more of the new radiation therapy patients from the above six towns to a Morton unit. The applicants report that 159 of the total 371 new cancer cases from the above six towns reported to the Mass. Cancer Registry in 1995, were diagnosed at Good Samaritan, representing a possible range of 77 to 178 additional radiation therapy referrals to a Morton unit....Because of the high rate of utilization of the existing Brockton service by West Bridgewater patients, staff has excluded West Bridgewater patients from the projected number of referrals. Applying the above age-adjusted, average cancer incidence rate per 1,000 population methodology to the MISER population projections for the remaining five cities/towns results in 320 new cancer cases by the year 2000. Adjusting for 48% of patients seeking radiation therapy treatment, and BGPMA referrals at 50% of the total new radiation therapy cases, there will be at least 77 new radiation therapy referrals from Mansfield, Norton, Easton, Bridgewater, and East Bridgewater by the year 2000. Therefore, given the projected volume of 212 new radiation therapy cases from Morton's 'core' service area, and the 77 projected new radiation therapy referrals from

BGPMA physicians, the proposed Morton unit will serve at least 289 new radiation therapy cases and provide 7,225 treatments in the year 2000. The Guidelines state that 250 new patients annually and an operating capacity of 6,000 treatments annually are required for a radiation therapy unit. Staff has also determined that existing radiation therapy services in the region are in excess of the Guideline's standard of 30 minutes travel time for a majority of Morton's projected new radiation therapy patients, and therefore, a new Morton radiation therapy service would significantly improve access to radiation therapy services for the region's cancer patients. Staff finds that the applicant meets the health care requirements of the Guidelines to establish a new radiation therapy service."

Mr. Page further noted that Good Samaritan, Morton, and St. Anne's Hospitals will jointly provide \$300,000 over a five-year period to develop a community service program related to cancer prevention and treatment as follows: \$150,000 to the Mass. Poison Control Center and \$150,000 over five years to hire one FTE case manager/cancer education coordinator. The FTE will be bilingual in Portuguese and available to radiation therapy patients and their families at both the Taunton and Fall River sites. Three Ten Taxpayer Groups (TTGs), the Dorothy Allen, Bridgewater, and Brockton, registered in connection with the proposed project but did not submit any written comments within the allocated time period, which was 30 days after the filing in April of 1994. The Brockton TTG originally requested a public hearing but withdrew its request on September 28, 1994. Comments on the staff's summary recommending approval of the Morton project were received from the Brockton Ten Taxpayer Group and these are summarized in Staff's January 19th memorandum to the Council. Staff finds no merit in the taxpayers' opposition to the application on the basis that it does not meet the review package for health planning, healthcare requirements, financial feasibility and relative merit. It is important to note that the applicant did not enter into a cluster agreement with Brockton Hospital back in 1994 when the application was filed, because at that time, Brockton Hospital's radiation therapy service was not underutilized. It is indicated in the staff's memorandum that both parties tried unsuccessfully to collaborate on radiation therapy services in the area. Other comments by the TTG relate to procedural issues as indicated in staff's response which were consistent with the DoN regulations."

Discussion followed, whereby the Council asked questions of staff. Council Members Sneider and Askinazi wanted to know why staff is recommending approval of two units in the same area, when the 1993 radiation guidelines state need for one unit. Morton Hospital wants a new unit in Taunton and Brockton Hospital is seeking to transfer an existing unit to Taunton. Dr. Dreyer responded, "...Morton has filed according to the guidelines and is entitled to be evaluated according to the guidelines and staff is recommending approval because it meets the criteria for approval laid out in the guidelines. As you will hear later, that same analysis applies to Brockton. That is, Brockton is entitled to be approved under the DoN regulations governing transfers of site. Now with respect to the questions of dollars and cents I would argue that the healthcare environment today is not what it was 15 years ago, and what hospitals choose to spend on services is not necessarily what payers are going to reimburse them for, and with the attention of hospitals on the bottom line, it is hard for me to conceive that a hospital is going to make a strategic judgement to move a service to a place where it doesn't expect that that service will be utilized and generate sufficient revenue to support it." Ms. Joyce James, Director, Determination of Need Program, added, "...The guidelines recommend that planning for radiation therapy be on a statewide need, however, along with that recommendation is the issue of access. The patient should

have access within 30 minutes travel time to a radiation therapy service, and that is why Jere's analysis includes the local level – looking at cities and towns that are within 30 minutes driving time from Brockton to arrive at that estimate.”

Mr. Thomas Porter, President of Morton Hospital, Taunton, addressed the Council next, “...This application is the culmination of planning for increased access in this area which has spanned many years. In fact, Morton was part of a cooperative effort more than five years ago before the cluster approach was adopted as a guideline. That effort ended in the staff recommendation for denial and was upheld by the Public Health Council. From a planning point of view, the cluster before you today is a better proposal which reflects the dynamics of the market. It is a well thought out proposal that addresses the guidelines. It will result in increased access for this important service, and the increased access will be provided by three institutions who are the most logical partners for a radiation therapy cluster in a proposed geography. Morton and Good Samaritan Hospitals, along with their medical staffs, are the primary providers of healthcare for this geography. St. Anne's, which currently operates a licensed radiation therapy program, is the leading provider of radiation therapy for the proposed geography, and St. Anne's program exceeds the recommended capacity. This proposal is the best solution to increase access for the geography identified....Obviously, we agree with staff's analysis and would like to express our appreciation for their help with this application process. Approval will result in an enhancement to integrated cancer care in the area. In closing, let me emphasize that the cluster addresses the Department's guidelines and the cluster partners are the most logical for the geography identified, thus it is the best solution to increased access to radiation therapy for this area.”

Mr. Frank J. Larkin, President of Good Samaritan Medical Center, Brockton testified before the Council, “...We joined this cluster in 1994 on the belief that patients, particularly to the south and west of the Good Samaritan Medical Center, needed more convenient access. The primary physicians of Good Samaritan Medical Center are a group called Bridgewater Goddard Park Medical Associates. They have offices in the Taunton, Raynham, and Easton area. They have indicated a willingness to refer based on access, convenience and quality to this particular medical center. We believe that access is one of the paramount features of this particular application...”

Mr. Michael Metzler, President of St. Anne's Hospital, addressed the Council, “...St. Anne's will provide under this new service the administration and management of radiation therapy and the physician services and quality oversight would be provided by our tertiary affiliates, which has been mentioned as the Joint Center for Radiation Oncology. St. Anne's is the predominate provider of radiation therapy in our region and we serve over 1,200 patients in the Greater Fall River and New Bedford areas. At our facilities we have, besides our own administration, the management that services the Joint Center for Radiation Therapy. We also serve a large Portuguese population, so we think that we are prepared to serve the community in that way. We support the services as a way for patients who come to St. Anne's now, about 80 in number, with the opening of this new service, to have the opportunity to receive their treatments right within their own community rather than travel all the way to the New Bedford/Fall River area.”

Discussion followed whereby the Council questioned applicants. Council Member Sneider asked Mr. Larkin where Good Samaritan sent its patients for the past three years. Mr. Larkin responded that the physicians referred approximately 50% of the patients to Brockton Hospital, 1/3 to 1/2 go to the Thomas Shield Center [located at Crown Colony complex in Quincy], and about 10% go to the Joint Center for Radiation Therapy. It was further noted that presently there are three machines servicing the region: two linear accelerators at St. Anne's in Fall River, and one linear accelerator in Dartmouth. During Council questioning, Ms. Jane Freeman, Director of Planning, Morton Hospital, Taunton stated that there is only need for one machine in the Taunton area, not two. Discussion continued, Mr. Sneider, questioned the applicants about the costs of the machine. Mr. Sneider said, he did not understand the reasoning for a new machine when one already exists in Brockton. Ms. Freeman added for the record that the machine in Brockton is a 19 year old 6 MeV and would have to be replaced at an expenditure comparable to that of a new machine. Council member Yaffe questioned the applicants on why their community initiative money was going to a Poison Control Center, which is not related to cancer prevention. Dr. Paul Dreyer, Director, Division of Health Care Quality, noted for the record that staff directed the applicant to include the money for the Poison Control Center "because the service needed independent funding and from time to time it is necessary to fund the Poison Center through DoN Linkage Program and this is one of them." Council Member Connolly asked why it took so long to review the application which was filed in 1994. Dr. Dreyer responded, "In the interests of the Department, we have encouraged the applicants to engage in a dialogue with Brockton and I know a number of dialogues have occurred over the years. I think they have not come to fruition."

Mr. Robert MacName, Medical Oncologist from Taunton, stated in part, "...I and my associate, Dr. Judith Klineman, see about 200 new cancer patients a year at the Morton Hospital in Taunton. Approximately half of those patients at some time will require radiation therapy, often multiple courses of therapy. From Taunton the nearest radiation center are the Southwood Community Hospital in Norfolk, the Brockton Hospital on the east side of Brockton, and St. Anne's Hospital in Fall River. Travelling for radiation therapy, especially at this time of year is no picnic. These treatments are every day, Monday through Friday, for anywhere from two to five weeks. Not only does the patient have to make the trip but as they are often disabled, someone has to take them, which means time out of work, finding someone to do that. If one comes to my office they may come in before work, after work, on a lunch hour, drop off a patient, pick them up later, take a few vacation hours. But if one has to travel a half hour or so for radiation therapy that means a full day out of work basically. Now, when one treats any patient for any disease one thinks of side effects and adverse reactions. You and I think of the side effects as drug reactions or pain of surgery. The patients look at travel time, time out of work, lost income, and disruption of the family as being side effects. It has happened more than once that a patient of mine has decided against radiation therapy, opted to put up with the symptom as much of radiation is not curative but palliating symptoms. They would rather take medication than do the travelling to get the treatment that may better resolve the symptoms. This is especially true in Taunton. I am a Boston native but when I moved to Taunton I found that half the population is Portuguese and a large amount of them are first generation immigrants who are reluctant to leave our community. To be able to provide this service in Taunton I think would be a great aid to them..."

Dr. Rita Unggad, Chief of Radiation Oncology at Morton Hospital, addressed the Council. She said in part, "...We have approximately for fiscal year 1997, 1200+ patients treated on our three machines. That is a real high load with high quality work going on. At the same time, when we opened the Dartmouth site what we found was that it was a tremendous boom from the point of access. The numbers we projected were actually exceeded very quickly because, as Dr. MacName has indicated, physicians and families have been very satisfied with the quality of the care that patients receive. And to a smaller amount it certainly would ease the business of our treatment facilities to have another facility available closer to those 80+ patients..."

Attorney Ronald B. Schram, Ropes & Gray, of the Brockton Ten Taxpayer Group testified before the Council. He said in part, "...The group continues to be opposed to the approval of the Morton Hospital application. Staff's response to our comments on its original staff summary is replete with inconsistencies, unsupported rebuttals, and illogical arguments. Simply put, there is no basis in either law or policy for this Council to approve a new radiation therapy service in Taunton at a capital cost of more than 4 million dollars when at this very meeting, staff is recommending approval of Brockton Hospital's request to transfer the site of one of its two approved DoN's for radiation therapy to Taunton. Any way you look at it this makes no sense. It is your responsibility to avoid duplication and to assure sound health planning. Staff's recommended approval of Morton's application is not consistent with that responsibility....Morton's application does not get anywhere close to the required projected volume unless you count the volume from Good Samaritan which is now, as Mr. Sneider noted, being referred to Brockton Hospital. You have to move that volume in order to find need for Brockton's unit which you have already approved. That is not good planning. That is duplication of resources. And that is basically unfair....Mr. Yaffe has asked whether there were serious discussions between Morton and Brockton. He was assured first by Mr. Porter and then by Dr. Dreyer that there have been serious discussions. I can tell you openly and honestly, having been involved in this for this entire period that that there has been no such discussion. We have documented that in a letter that we have submitted to the staff dated October 6. Morton Hospital has refused to engage in any serious discussions with Brockton Hospital. Those are the facts. They are on the record....We have asked in that October letter to participate in a collaborative discussion with Morton Hospital. We have volunteered to submit to mediation. We have volunteered to give Morton Hospital an equity position in the units that we transferred to that area. They have not responded to those overtures at all. I ask you to consider that when you are reflecting on this application."

Attorney Carl Rosenfield, Deputy General Counsel, Department of Public Health clarified for the Council, "...I would like to start by at least putting this in some kind of context. In April of 1994, pursuant to guidelines which were adopted by the Department prior to that date, the Morton, Good Samaritan, St. Anne's consortium filed a DoN application based on an articulated need by the Department of one unit – the need for one additional unit based on the statewide service area. There were two other comparable applications. And they were entitled to be considered together. Now five years has gone by and during that time, the Morton, Good Samaritan, St. Anne's consortium remains as the only one of the three comparable applications that maintained that status. It is entitled under the law and regulations to have its application determined and reviewed under the applicable DoN guidelines and regulations. Now, subsequent to that, we have another application. I am going to try to clarify the

differences between the two applications. In the case of Morton, you are dealing with a full blown DoN application that was in competition with two other applications for one unit which was the determined need for additional radiation therapy service. In January 1995, subsequent to the original filings by the three comparable applicants, Brockton Hospital filed to move one of its existing radiation therapy units from its location in Brockton to a location in Taunton. Because this is an existing unit, it is considered under a separate set of criteria laid out in the Department's regulations. The staff is coming to you today with a recommendation that pursuant to the full DoN review criteria, Morton is entitled to have its application considered and staff recommends approval. But staff is also saying under the more limited review criteria that exists with regard to evaluating transfers of sites of existing services, Brockton is entitled to have its application approved...It is important not to lose sight of simple fundamental fairness when the Department issues guidelines and regulations, and says there is a need for additional service, an additional number of beds, an additional unit. People file in good faith and they should be able to rely on those articulated standards and criteria in having their applications reviewed. Just as when someone considers relocating an existing service, fairness dictates that they be allowed to rely on the articulated criteria in the Department's regulations. So what staff is asking you to do today is look at both of these applications, introducing a matter of fairness, and saying under the respective criteria, which may seemingly be inconsistent, consider the applications...."

Council Member Sherman stated in part, "...I understand the rules and regulations....Mr. Sneider, a successful business man and member of HEFA looks at this as a business issue and sees it doesn't compute. Understanding the issues of staff and you say in basic fairness each one has to be considered...It is guerilla warfare out there and things are different now than they were ten years ago. It is the industry. I see the situation out there is a circus and I see the Council as the ringmaster. Someone has got to take this in hand and as we have done before...on a number of occasions, pushed and prodded the applicants...to hammer out a resolution, a compromise. Where we save the insurers, the taxpayers, and everybody else who carries this burden...whether we save a million or ten million...somewhere someone has got to bite the bullet and do these things. Now it is incumbent upon the Council to do that. There are many ways we can do this. We can table everybody's 'application and ask everybody to go into a room and tape the door shut and make it happen...Bigger issues have been resolved in the world in the last couple of months by people who have been at each other's throats....This isn't Yugoslavia or the Middle East. It is supposed to be where reasonable people can disagree. We have people with competing interests. Someone, the statesman on the Council, Mr. Yaffe, should raise the issue because he says it better than I do and find a way to lock these guys in a room and have them come out with a reasonable answer...I think we ought to sit down and talk about how we can save the Commonwealth, the taxpayers some money, make the staff happy and we may make both applicants partially happy."

Discussion followed around the issue of the whether the respective applicants have tried to collaborate for the past five years. Staff responded that the applicants have had the opportunity to work together but haven't. Attorney Carl Rosenfield added, "...I guess there is a basic philosophical question here: 'Are we going to look at this and look at the rules, law, regulations and guidelines and try to make an informed judgement here or are we going to do something to try to preserve market share?'" The

Council responded to staff by saying, “Don’t be simplistic, these competing facilities would be four miles apart.”

Attorney Peter Braun, McDermott, Will & Emery, Counsel for Morton Hospital and the cluster, addressed the Council, “...What it boils down to...the Morton and Good Samaritan and St. Anne’s Hospital, the cluster have demonstrated the need for one more unit based on the DoN criteria. The need is there. There is a unit needed in the state. This community needs one. It is a city of 50,000 people in Taunton alone, and a much larger area. The place that it is going to be is in Morton’s territory if you will, the primary service area – right in the middle of it. That is where the central action is. And there is a core group of well over 200 people who come right from those areas. Then there are some fringe towns where there will be some more. It all adds up to making need, and that is what we wanted you to see by this map....We don’t think staff looked at this the correct way. Brockton Hospital doesn’t serve the Taunton area. So making the assumption that they do in the consideration of this application just isn’t fair to what these parties have put together. This cluster was put together in accordance to the guidelines including a hospital from the Brockton area, namely Good Samaritan. They have a decent marketshare there, Brockton Hospital does not...We have a community which is in need of a unit, and we have Good Samaritan which makes all the sense in the world to be a partner here because it already serves the Taunton area, unlike Brockton....What this group did was it met your requirements. They formed a cluster. They have put together a well thought out, well considered application. You have two physicians come in here and tell you why this means good things for the people of Taunton because it fits right into the mosaic of care that already exists in terms of cancer treatment. How are we supposed to take a cluster that we have formed pursuant to your guidelines and rip it apart? That is the question.”

Attorney Carl Rosenfield, Department of Public Health, “The question was have you tried to build a broader cluster and you haven’t answered that question.” Mr. Thomas Porter, President of Morton Hospital and Medical Center, said it was his question to answer, “...There have been three occasions which there had been discussions related to some potential cooperative arrangements with Brockton Hospital. On one occasion it was with a consultant for Brockton Hospital and on one occasion it was with an independent individual who attempted to try and help us with some sort of a cooperative arrangement. That was not a formal process. It was a very informal process. And on one occasion there was a discussion about radiation therapy which was conditioned on support for a future issue which will come before this Council and that is cardiac surgery. There have in fact been a number of discussions around this....”

Mr. Norman Goodman, President of Brockton Hospital, added, “To the best of my knowledge there has not been any contact with DPH staff suggesting collaboration throughout this process, and certainly not with me personally. With regard to discussions involving the cluster or Morton Hospital or Good Samaritan, there were two meetings that took place at Brockton Hospital discussing the collaboration on radiation therapy and open heart surgery, in an attempt to do what I believe is absolutely imperative in that community and that is reach out and serve that community as best we can at the lowest cost possible. Both those discussions resulted in both Good Samaritan and Morton Hospital thinking that they did not wish to collaborate. Brockton Hospital stands ready and willing to collaborate on the

project.” Ms. Ridley, Assistant Commissioner, Division of Health Quality Management, and Dr. Paul Dreyer noted that “staff has had numerous conversations with representatives of Brockton Hospital and Morton Hospital and Medical Center regarding potential collaboration.” Discussion continued, whereby, Mr. Norman Goodman of Brockton Hospital, said, “...We asked for collaboration and we were told no. That is the only barrier that I see. Again, we are fully prepared and willing to have those discussions further.” He suggested that the decision-makers be put in a room to discuss collaboration. In response to questions by Council Member George, Jere Page clarified some data and said, “We have looked at the data very closely and it indicates that there is support including physician group support that will provide the sufficient data for a Morton application.”

Attorney Carl Rosenfield, Deputy General Counsel, Department of Public Health, said in part, “...I am looking forward and looking at sort of preserving the integrity of the process where you say okay, we are going to establish need, we are going to invite competition for that need. You solicit applications pursuant to the guidelines for the particular service. Then you have somebody who chooses not to submit an application or may not be in a position to submit an application file to expand a service or move part of a service into the service area of one of the applicants. Then they come before the Public Health Council and say let’s force collaboration here. I am wondering if that is playing on a level playing field. I harken back to my earlier comments which is the staff believes based on the applicable criteria that both are entitled to be approved.”

Mr. Page noted in regard to travel time, having consulted with a local ambulance service, that 80% of the patients to be served at a Taunton unit would be beyond the 30 minute travel time established in the guidelines to travel to Brockton Hospital. Council Member Joseph Sneider noted, “I want to reiterate that I am talking about dollars and cents....We are talking about 7 million dollars versus 2 million dollars and to me it is not justifiable. I could care less about the situation. They have a right to appeal. They have a right to put in an application. It is dollars and cents. It is ridiculous because they are going to get the same type of service if they did collaborate with each other...They are going to be served out there...”

Council Member Yaffe said, “Before I make a motion I would like to make a few comments. First of all, everybody was always against planning. I would like to remind you that if HSA V were in existence you wouldn’t be faced with this issue up here today. You would have had what you wanted long ago...Secondly, for everyone that also wished and advocated for an unbridled free market, be careful what you wish for, you got it. That is what you are faced with here. Having said that...I understand where staff is coming from and I think that procedurally you are right. I think we have mixed a couple of things over here and there is no way that I can vote against this particular application. I think there are some compelling arguments for it, notwithstanding the fact that there are other problems. I am not happy about the community benefit. There is going to be a third condition. I figure that each of these hospitals over five years are only contributing \$20,000 a year (\$300,000 over five years). The third condition would be an extra contribution of \$150,000 over five years for cancer prevention activities in those communities (\$450,000 over five years). The motion was seconded by Mr. Phelps. The motion was a tie and therefore did not carry (four in favor and four opposed, one member out of room and therefore did not vote).

Council Member Joseph Sneider made a motion to table the Good Samaritan Medical Center, Morton Hospital & Medical Center and St. Anne's Hospital application for 90 days so staff can try to mediate further discussions between the applicants and Brockton Hospital.

After consideration, upon motion made and duly seconded, it was voted: (Dr. Askinazi, Dr. Connolly, Mr. George, Mr. Sherman and Mr. Sneider in favor; Dr. Koh, Mr. Phelps, Ms. Slemenda and Mr. Yaffe opposed) **to table Project Application No. 5-3897 of Good Samaritan Medical Center, Stoughton, Morton Hospital & Medical Center, Taunton and Saint Anne's Hospital, Fall River** for 90 days in order to have staff try to mediate further discussions between the said applicants and Brockton Hospital, Brockton. A summary is attached and made a part of this record as **Exhibit number 14,634**.

PROJECT APPLICATION NO. 6-3896 OF NORTH SHORE RADIATION THERAPY (LAHEY CLINIC, ATLANTICARE MEDICAL CENTER AND BEVERLY HOSPITAL):

Ms. Joan Gorga, Program Analyst, Determination of Need Program, presented the Project Application No. 6-3896 to the Council. Ms. Gorga said, "The applicant AtlantiCare Medical Center and North Shore Radiation Therapy Partnership are before you today seeking permission to expand their existing megavoltage radiation therapy service through the purchase of a second 6 MeV linear accelerator at a renovation of space at the Lahey Clinic North in Peabody to house the second unit. Staff has reviewed the application utilizing the May 25, 1993 guidelines for megavoltage radiation therapy services. According to those guidelines, which have as a target year the year 2000, the applicant must be able to document a projection of at least 550 new radiation therapy patients for two machines. Staff found no need for a second radiation therapy unit at the Lahey Clinic North site in Peabody because the applicants were not able to demonstrate that they met the required 550 patients per year for a second unit consistent with the guidelines. Changes in referral pattern and slow growth in demand have not sufficiently increased the volume of new patients to achieve the 550 figure required for a new unit."

Ms. Gorga further noted, "the Lynn Health Task Force registered as a Ten Taxpayer Group and commented on the staff summary indicating that if the application is approved, AtlantiCare must guarantee access to all services and provide transportation and translator services. Staff recommends denial of the project."

Dr. Askinazi asked staff about inconsistencies in the staff summary. Dr. Dreyer and Ms. Gorga clarified his concerns. The applicant and the Ten Taxpayer Group were not present. Dr. Dreyer said, "I think the Council might determine the applicant's absence as an expression of the applicant's interest in the application." Mr. Yaffe made the motion to approve staff's recommendation of denial. During the Discussion, Council Member Sherman said, "I'm abstaining because I can't figure it out. They spend all this time and money to do this and they are not here."

After consideration, upon motion made and duly seconded, it was voted: (Chairman Koh, Dr. Connolly, Mr. George, Mr. Phelps, Ms. Slemenda and Mr. Yaffe in favor; Mr. Sneider opposed; Mr. Askinazi and Mr. Sherman abstaining) **to deny Project Application No. 6-3896 of North Shore Radiation Therapy (Lahey Clinic, AtlantiCare Medical Center, and Beverly Hospital)** to add a second 6 MeV Radiation Therapy Unit to be located on the site of the existing linear accelerator at Lahey Clinic North in Peabody. A summary is attached and made a part of this record as **Exhibit Number 14,635**.

COMPLIANCE MEMORANDUM:

REQUEST FOR TRANSFER OF SITE OF PREVIOUSLY APPROVED PROJECT NO. 5-2782 OF BROCKTON HOSPITAL, BROCKTON:

Dr. Paul Dreyer, Director, Division of Health Care Quality, stated, "Staff is prepared to make a presentation as to why in staff's view this application should be approved but I am wondering given the previous extensive discussion of this application [see Project Application No. 5-3897 of Morton Hospital and Medical Center, Good Samaritan Hospital and St. Anne's Hospital] that the Council might want to consider a tabling of this item as well. Council Member Yaffe agreed and made the motion. During discussion of the motion, Council Member Sherman added, "I am doing this with no prejudice. I know they are two separate applications and allegedly they are not competing but when they are done they will be competing. I want to make sure that if there is a possibility to get together. We could save a few bucks by doing this. That is the reason I am doing this."

After consideration, upon motion made and duly seconded, it was voted unanimously **to table** for 90 days the **Request by Previously Approved DoN Project No. 5-2782 of Brockton Hospital, Brockton** for Transfer of Site (move a 6 MeV linear accelerator from Brockton Hospital at 680 Center Street, Brockton to a proposed site on Bay Street in Taunton near the intersection of Interstate Highway 495). During the 90 days, staff will try to mediate further discussions between the said applicant and the applicants of Project No. 5-3897. Staff's memorandum is attached to this record as **Exhibit Number 14,636**.

The meeting adjourned at 12:10 P.M.

LMH

Howard K. Koh, M.D., M.P.H.
Chairman

MINUTES OF THE PUBLIC HEALTH COUNCIL
MEETING OF JANUARY 26, 1999
MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH